STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANTE A. BAINES,

Defendant-Appellant.

UNPUBLISHED
January 4, 2000

No. 205269
Recorder's Court
LC No. 96-005564

Before: Doctoroff, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for third-degree criminal sexual conduct (CSC III), MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), and fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e(1)(b); MSA 28.788(5)(1)(b). Defendant was sentenced to concurrent prison terms of four to fifteen years for the CSC III conviction, and one to two years for the CSC IV conviction. We affirm.

Defendant's convictions arise from a series of sexual assaults that occurred on July 3, 1996, when the victim was thirteen years old. On that day, the victim was out riding her bike with her godbrother when she came upon a group of young men, one of whom was defendant. After making plans with defendant to take a walk, the victim took her godbrother home. Eventually, defendant and the victim walked to a house where a friend of defendant's was living. At some point while the victim was sitting with defendant on a couch in an upstairs bedroom, another man, Kevin Johnson, entered the room and proceeded to sexually penetrate the victim while defendant sat next to her. The victim also testified that at some point prior to this assault, defendant reached over and touched her breast. Thereafter, the victim was sexually assaulted by several men, none of whom was defendant. Later, defendant walked the victim back to her home. Defendant was charged with five counts of aiding and abetting in the commission of first-degree criminal sexual conduct (CSC I) and one count of CSC IV. Defendant was convicted of one count of aiding and abetting in the commission of CSC III, and one count of CSC IV.

Defendant first argues that insufficient evidence was presented at trial to support his conviction for one count of CSC III. "This Court reviews sufficiency of the evidence claims by considering the

evidence in the light most favorable to the prosecution and determining whether a rational trier of fact could have found that the essential elements of the charged crime were proved beyond a reasonable doubt." *People v DeKorte*, 233 Mich App 564, 567; 593 NW2d 203 (1999). Defendant's CSC III conviction involved the sexual assault committed by Johnson while the victim was on the couch. Defendant's argument in his brief on appeal, however, appears to be focused on the allegation that defendant aided and abetted in Johnson's alleged sexual assault of the victim on the upstairs bed. The verdict form clearly shows that defendant was found not guilty of this charge.

Defendant next argues that the trial court abused its discretion when it failed to grant defendant's motion for a new trial. Specifically, defendant asserts that the trial court should have granted his motion because there was no testimony which established that defendant intentionally touched the victim's breast, or that if he did, that it was done for the purpose of sexual arousal or gratification. We disagree. The victim specifically testified that defendant touched her breast while the two were seated on a couch in an upstairs bedroom. Given the totality of the circumstances, we believe a jury could reasonably conclude that defendant touched the victim's breast for sexual purposes. Therefore, we see no abuse of discretion in the trial court's denial of defendant's motion for a new trial. See *People v Gadomski*, 232 Mich App 24, 27; 592 NW2d 75 (1998).

Defendant also argues reversal of his convictions is warranted because he was denied a fair trial when the prosecutor repeatedly used the term "rape" throughout trial. Initially, we note that not only has this issue been waived because defendant fails to cite any authority in support of his argument, *People v Weathersby*, 204 Mich App 98, 113; 514 NW2d 493 (1994), but also that defendant failed to raise a specific and timely objection at trial to any of the challenged references. *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990). In any event, we nonetheless conclude that defendant's argument is meritless. See *People v Ullah*, 216 Mich App 669, 678; 550 NW2d 568 (1996).

Finally, defendant argues that use of a codefendant's statement at trial violated the rule set forth in *Bruton v United States*, 391 US 123, 126; 88 S Ct 1620; 20 L Ed 2d 476 (1968). We disagree. "The *Bruton* rule prohibits the introduction of a nontestifying codefendant's confession in a joint trial where the confession inculpates the defendant." *People v Butler*, 193 Mich App 63, 66, n 1; 483 NW2d 430 (1992). As the United States Supreme Court observed in *Richardson v Marsh*, 481 US 200, 208; 107 S Ct 1702 95 L Ed 2d 176 (1987), the *Bruton* rule is a narrow one. We conclude that the *Bruton* rule, which is grounded in the constitutional right of confrontation, has no application where the confessor actually testified. See *Butler, supra* at 66, n 1.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly